

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

|                           |   |                     |
|---------------------------|---|---------------------|
| UNITED STATES OF AMERICA, | : |                     |
|                           | : |                     |
| Plaintiff,                | : |                     |
|                           | : | Civil Action No.    |
| v.                        | : | 3:16-CV-622-CWR-FKB |
| STATE OF MISSISSIPPI,     | : |                     |
|                           | : |                     |
| Defendant.                | : |                     |

**UNITED STATES' MOTION FOR ORDER REGARDING THE APPLICATION OF  
MISSISSIPPI RULE OF PROFESSIONAL CONDUCT 4.2**

The United States respectfully moves the Court for entry of an Order confirming the application of Mississippi Rule of Professional Conduct 4.2 ("Rule 4.2") in this litigation.

1. The Parties do not agree on the application of Rule 4.2 in this litigation.
2. In order to efficiently and effectively conduct discovery and to ensure compliance with applicable professional responsibility obligations, the United States seeks clarity on the categories of individuals it may permissibly contact under Rule 4.2.
3. Clarity is required, in the form of an order confirming:
  - a. Rule 4.2 does not apply to former employees;
  - b. The admissions prong of the comment applies only to those current DOM and DMH employees who are in a position to bind the State in this matter or make decisions regarding the litigation; and
  - c. Rule 4.2 does not bar *ex parte* communications with chancery judges or other similarly situated current employees in this matter.
4. For support, the United States attaches the exhibits listed below and files a Memorandum of Authorities in Support of this Motion:

Exhibit A – Letter from H. Pizzetta to A. Mallinson (Aug. 19, 2016)

Exhibit B – Letter from B. Kelley to H. Pizzetta (Oct. 11, 2016)

Exhibit C – Email from B. Kelley to J. Shelson (Nov. 9, 2016)

Exhibit D – Email from J. Shelson to M. Schutzer (Aug. 2, 2017)

Exhibit E – Email from M. Schutzer to J. Shelson (Aug. 18, 2017)

Exhibit F – Email from J. Shelson to M. Schutzer (Aug. 18, 2017)

Exhibit G – Letter from M. Schutzer to J. Shelson (Sept. 18, 2017)

Exhibit H – Email from J. Shelson to M. Schutzer (Mar. 26, 2018)

Exhibit I – Email from J. Shelson to M. Schutzer (Mar. 27, 2018)

Exhibit J – Letter from J. Shelson to M.J. Ball (Apr. 2, 2018)

Exhibit K – Letter from M. Schutzer to M.J. Ball (Apr. 2, 2018)

Respectfully submitted,

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Southern District of Mississippi

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/s/ Mathew Schutzer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2018, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Mathew Schutzer  
Mathew Schutzer (NY Bar #5136007)